

# United States Senate

WASHINGTON, DC 20510

June 11, 2007

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
224 Senate Dirksen Office Building  
Washington, D.C. 20510

The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
152 Senate Dirksen Office Building  
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

We write to you about S. 1145, the Patent Reform Bill of 2007. We commend you for tackling the important issue of patent reform. We agree that it is important to update our nation's patent system to ensure better patent quality and to preserve property rights in the inventions that drive our economy. However, after last week's hearing, it is obvious that there are multiple issues that need to be reviewed and discussed before the Committee is prepared to mark up the bill.

We believe that the testimony at the hearing reflected the need for further discussion among members, staff, the Patent and Trademark Office, the Department of Justice, and stakeholders. Accordingly, we ask that you not move the patent reform bill until we have had time to work through certain issues. Some of us plan to submit Questions for the Record for the hearing which are not due to be submitted until Wednesday June 13—one day before the scheduled markup. The Committee should be afforded appropriate time to fully review and evaluate those answers. It is likely that those answers will give insight into changes that should be made to improve the legislation.

We believe that more hearings are necessary to adequately address a number of important issues with broad implications for our economy. Specifically, we believe that the issue of mandatory apportionment of damages, post-grant opposition, and broad rulemaking authority for USPTO need to be more carefully examined to ensure that they do not undermine innovation, increase frivolous litigation, or undermine property rights. Many prominent American businesses on the cutting edge of innovation are expressing concerns about the impact of sweeping patent reform. These concerns merit thoughtful deliberation, and we believe that more hearings will help to inform the committee before we proceed to markup.

Additionally, more attention should be given to the issue of how to improve patent quality. It is critical to America's global innovative edge that Congress ensures that the U.S. Patent and Trademark Office is as effective as possible in issuing valid patents.

Finally, more attention should be given to examining the problem of speculative litigation and alternatives to stopping unnecessary and costly litigation.

Although the Committee's Intellectual Property Subcommittee did hold four hearings on the general issue of patent legislation in the 109<sup>th</sup> Congress, the hearings preceded any specific legislative proposal. Now that we have specific bill text, the Committee should dig into the legislation and fully educate itself as to the implications while giving Members full opportunity to suggest alternative language.